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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
The Establishment of Rules to Prohibit	)	
the Imposition of Unjust, Onerous	)	
Termination Penalties on Customers	) CC	Docket No. 99-142
Choosing to Partake of the Benefits	)	
of Local Exchange Telecommunications	)	
Competition	)	

KMC TELECOM INC.
PETITION FOR DECLARATORY RULING

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SUMMARY

KMC requests that the Commission declare unlawful termination penalties imposed by incumbent local exchange carriers ("ILECs"), to prohibit enforcement of these ILEC termination penalties, and to require the removal of ILEC termination penalties from ILEC state tariffs until such time as customers have a more genuine competitive choice than currently exists. Despite Congress' enactment of the Act and the Commission's adoption of pro-competitive rules, telecommunications competition does not exist in most local exchange markets. ILECs continue to wield substantial market power in local exchange markets and engage in anti-competitive practices thereby preventing CLECs from entering markets. One anti-competitive practice is the use of unreasonable, excessive termination penalties in long term service arrangements, which force customers to remain in those arrangements and prevent CLECs from obtaining customers. The imposition of these termination penalties prolong an ILEC's monopoly over local exchange service and, therefore, forestall competition.

Excessive termination penalties imposed by an ILEC during a time in which the ILEC maintains market dominance are unreasonable and should be declared unlawful. These termination penalties, which are a result of ILEC monopoly power, confine customers to service arrangements established in a less then competitive environment and prevent competitive local exchange carriers ("CLECs") from garnering customers and from offering competitive, innovative services at more advantageous rates, thereby, preventing CLEC entry in local markets. Thus, ILEC termination penalties violate the Congressional mandate under Section 253 of the Act requiring the removal of all barriers to entry into local exchange markets.

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KMC TELECOM INC.
PETITION FOR DECLARATORY RULING

Pursuant to Federal Communications Commission ("Commission") Rule 1.2,[1] KMC Telecom Inc. and its affiliated companies (collectively, "KMC"), by their counsel, respectfully submit this Petition for Declaratory Ruling to request that the Commission declare unlawful termination penalties imposed by incumbent local exchange carriers ("ILECs"), to prohibit enforcement of these ILEC termination penalties, and to require the removal of ILEC termination penalties from ILEC state tariffs until such time as customers have a more genuine competitive choice than currently exists. Excessive termination penalties imposed by an ILEC during a time in which the ILEC maintains market dominance are unreasonable and should be declared unlawful. These termination penalties, which are a result of ILEC monopoly power, confine customers to service arrangements established in a less then competitive environment and prevent competitive local exchange carriers ("CLECs") from garnering customers and from offering competitive, innovative services at more advantageous rates, thereby, preventing CLEC entry in local markets. Thus, ILEC termination

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[1] 47 C.F.R. §§1.2.

penalties violate the Congressional mandate under Section 253 of the Act requiring the removal of all barriers to entry into local exchange markets.

I. STATEMENT OF INTEREST

KMC is a competitive telecommunications carrier offering facilities-based and resold local and long distance telecommunications services in 23 markets in 12 states throughout the country. KMC has interconnection and resale agreements with ILECs in these states under Sections 251 and 252 of the Act. KMC, as a new market entrant to historically closed markets, is subject to substantial competitive disadvantages in the telecommunications marketplace. KMC's efforts to enter into local exchange markets throughout the country have been hindered by anti-competitive ILEC practices. One anti-competitive practice in particular is creating gridlock between KMC and its potential customers: the imposition of excessive termination penalties on customers.

Due to excessive termination penalties, numerous customers interested in subscribing to KMC local exchange services find themselves locked into service arrangements with the ILEC and unable to reap the benefits of KMC's competitive service. Customers are typically unaware of these termination penalties. When the customer subscribed to the ILEC service, no alternative existed. The customer accepted all terms and conditions offered by the ILEC because the customer needed the service, had no alternative, and wanted the best price possible. In most cases, the ILEC placed these excessive termination penalties in tariffs filed with the state commission. Customers usually discover their termination liability through a notice from the ILEC once the customer attempts to switch service from the ILEC to KMC. Due to the excessive financial penalty, customers cannot switch service to KMC. Without customers who can subscribe to KMC service, KMC cannot as a practical matter enter the market. As demonstrated herein, the Telecommunications Act of 1996 ("Act") requires removal of this barrier to entry.

II. ILECs IMPOSE TERMINATION PENALTIES TO MAINTAIN MARKET DOMINANCE AND TO FORESTALL COMPETITION

Despite Congress' enactment of the Act and the Commission's adoption of pro-competitive rules, telecommunications competition does not exist in most local exchange markets. ILECs continue to wield substantial market power in local exchange markets and engage in anti-competitive practices thereby preventing CLECs from entering markets. One anti-competitive practice is the use of unreasonable, excessive termination penalties in long term service arrangements, which force customers to remain in those arrangements and prevent CLECs from obtaining customers. The imposition of these termination penalties prolong an ILEC's monopoly over local exchange service and, therefore, forestall competition.

ILECs currently employ two different methods of using excessive terminating penalties to lock up customers: tariff term plans and contract service arrangements. In their end user tariffs, ILECs often offer special discounted rates for services like Centrex if the end user commits to receive service for a specified amount of time. Frequently, the ILEC inserts into the tariff unreasonable, termination liability language that the customer must accept in order to obtain these service arrangements. For example, ISDN services found in BellSouth's state tariffs in Alabama, Florida, Georgia, Louisiana, and North Carolina provide for a termination charge if the services are ended prior to the expiration of a contract service arrangement. Specifically, Section A42.3.2A.2 of the North Carolina tariff provides:

> [A] Termination Charge is applicable if service is terminated prior to the expiration of the contract. The applicable charge is dependent on the contract period subscribed to and will be equal to the number of months remaining in the contract times the monthly rate provided under the contract.

The practical effect of this section is that a customer is obligated to pay for all of the remaining services, regardless of whether the services are provided. For example, an Internet Service Provider ("ISP") in Winston-Salem, North Carolina was interested in switching its service from BellSouth to KMC. This ISP had a series of contracts with BellSouth for 9 PRI interfaces and access lines and 207 PRI B-channels. The monthly bills for these services totaled $11,237.45. The average amount of time remaining on these contracts was 32 months. When the ISP attempted to switch to KMC, BellSouth informed the ISP of its potential $365,000 termination liability. As a result, the ISP remained with BellSouth and lost the opportunity to obtain a more advantage service from KMC.

In Section B7.7.2 of its Florida tariff, BellSouth imposes the following onerous termination penalty on SMARTRing® service customers:

> A termination liability charge will be applicable if services provided under a [Channel Services Payment Plan] arrangement are disconnected prior to the end of the chosen service period. The applicable charge is equal to the number of months remaining in the rate stabilized service period times sixty percent of the monthly rates for SMARTRing® service which include Nodes, Channel Interfaces, Local Channels, Alternate Central Office Channels, Internodal Channels and/or Interoffice Channels provided under the CSPP arrangement.

The termination charges appear to have no relationship to unrecovered costs or lost profits of BellSouth but rather severely penalized a customer that terminates service early. Indeed, if a customer had alternatives in service providers, the customer would most likely not have agreed to such excessive, punitive termination penalty. Unfortunately, to date competitive alternatives have not generally existed in most markets and ILECs, such as BellSouth, have been successful in forcing these termination penalties on customers. CLECs, by contrast, do not have market power and are not able to force excessive termination penalties on customers.

KMC finds other ILECs engaging in similar anticompetitive practices. In Kansas, Southwestern Bell Telephone Company ("SWBT") imposes exorbitant and punitive penalties on customers interested in converting their customer contracts with SWBT to KMC. One such customer was assessed a $188,028.26 penalty for attempting to avail itself of KMC's service offerings. Specifically, Section 48.8.3 of the SWBT Kansas tariff provides:

> If the customer disconnects a SelectVideo Plus Control Link or Communication Link prior to the expiration of the 12, 36 or 60 month service term, the customer shall pay a charge equal to the Control Link or Communication Link rate in effect on the date of the contract times the number of months remaining on the 12, 36 or 60 month service term for each Control Link or Communication Link disconnected.

In Virginia, KMC's attempts to market to customers have resulted in frustration as a significant number of customers are parties to long term contracts with Bell Atlantic. A review of Bell Atlantic's tariffs reveals that it has numerous payment plans under which customers could be tied up for several years. For example, under Bell Atlantic's General Services Tariff No. 203, customers could be locked into purchasing Centrex Extend service from Bell Atlantic for up to 10 years.[2] Customers that signed up for Bell Atlantic's IntelliLinQ-PRI® service in January 1996 will not be able to avail themselves of the choices of a more competitive marketplace until 2001.[3] Likewise, customers agreeing to a 5 year contract with Bell Atlantic in late 1996 for Switched Multi-Megabit Data Service are prevented from taking advantage of newly available competitive service

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[2] Bell Atlantic - Virginia, Inc. General Services Tariff, S.C.C.-Va.-No. 203, § 13-Qm Original p. 5a through 2nd Rev. p. 8 (reissued April 8, 1998).

[3] *Id.* at § 14, 1st Rev. p.5 (issued Dec. 29, 1995).

options that have since come on line.[4] These long-term commitments have onerous termination penalties imposed on the customer. In Section 11.B.8.3 of Bell Atlantic's Virginia tariff, the termination liability its Digital Data Service is as follows:

> For discontinued service, the customer will be liable for 100% of the total monthly charges for any unexpired portion o fthe initial 12 months. In addition, the customer will be liable for 30% of the total monthly charges for the remaining portion of the commitment period.

Similar long-term payment plans with termination liability can be found in the context of Bell Atlantic's Frame Relay Service,[5] Concentrator-Identifier Equipment,[6] Call Routing Service,[7] Virtual Private Network Service,[8] Internet Protocol Routing Service,[9] and ATM Cell Relay Service.[10] Interestingly, many of these tariffed long-term payment plans were issued in the latter part of 1996 or early 1997, just as a number of CLECs, including KMC, were either preparing to enter the Virginia market for the first time or had just commenced operations in the Virginia local exchange market. Thus, the purpose of these provisions was to thwart competitive entry.

Similar termination liability language is found in service contracts entered into between ILECs and customers. Under certain circumstances, the ILEC will offer a service to a customer by

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4 *Id.* at § 15, 2nd Rev.p.6 through 2nd Rev.p.9 (issued Oct. 15, 1996).

5 *Id.* at § 15B, 2nd Rev.p.4 (issued Dec. 30, 1996).

6 *Id.* at § 16, Orig. pp. 2, 7-8 (issued March 4, 1994).

7 *Id.* at § 26, Orig. p. 8-9 (issued Oct. 1, 1997).

8 *Id.* at § 27, Orig. pp. 6-7 (issued Aug. 2, 1996).

9 *Id.* at § 29, Orig. p. 3 (issued July 27, 1996), through 1st Rev. p. 4 (issued March 21, 1997).

10 *Id.* at § 30, Orig. p. 7 (issued Dec. 30, 1996).

contract rather than a tariff. The ILEC places excessive termination liability language in the contract, to which the customer has little choice but to agree if the customer is to get the service in a market with no other providers of the service.

Termination penalties create gridlock in local exchange markets allowing ILECs to maintain market dominance and blocking the introduction of telecommunications competition. Customers must continue to receive service from the ILEC to avoid prohibitive termination charges and CLECs cannot accept service orders from customers. Termination penalties impose an undue burden on competition for local telecommunications services and, without eliminating such anti-competitive barriers, competition will be hindered.

III. THE COMMISSION SHOULD DECLARE ILEC TERMINATION PENALTIES UNLAWFUL, PROHIBIT THE IMPOSITION OF SUCH TERMINATION PENALTIES ON CUSTOMERS AND REQUIRE THE REMOVAL OF ILEC TERMINATION PENALTIES FROM STATE TARIFFS

A. Termination Penalties Imposed by a Carrier Who Maintains a Monopoly Over the Market Should be Declared Unlawful

Abusive practices such as excessive termination penalties imposed by an ILEC during a time in which the ILEC maintained market dominance should be declared unlawful. The law granted ILECs a monopoly over local telecommunications markets and the ILECs abused that grant of authority by imposing unjust, excessive termination liability on customers with no effective choice of service provider. The law must protect customers from abuses that result from the established monopoly from whom customers are forced to take service. As discussed below, state commissions accepted ILEC termination penalties inserted into ILEC tariff. Once these ILEC tariff term plans went into effect, the customer had no choice but to accept the terms and conditions of service. As pointed out above, with no alternative carrier available, customers had no reason to examine terms and conditions. The ILEC termination penalties should not have been accepted and these customers should not be penalized now when competition is beginning to emerge.

Imposing excessive termination liability on customers without bargaining power is a clear abuse of market dominance by the ILEC and should not be tolerated by the Commission. The ILEC practice of imposing excessive termination liability on customers with no bargaining power is an abuse of ILEC market power and should be declared unlawful.

B. Congress Mandated the Removal of all Barriers to Entry. The Commission Should Preempt Any State Action that Enforces or Preserves ILEC Termination Penalties

By enactment of the Telecommunications Act of 1996, Congress made its intent known – local exchange monopolies are to be dissolved, barriers to entering the local markets must be removed and customers should have access to the benefits of competition. Recognizing the continued jurisdictional tension existing in the telecommunications industry due to the dual jurisdictional nature of telecommunications services, Congress adopted Section 253 to give this Commission direct authority to preempt any state or local action that thwarts Congress' goal of opening the local exchange market to entities other than the ILECs.

Section 253(a) of the Act prohibits state requirements that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[11] ILEC termination charges clearly have the effect of prohibiting competitive entry by KMC and unreasonably restrict the means by which all CLECs enter and provide service in local

[11] 47 U.S.C. § 253(a).

exchange markets throughout the country. State commission approval and continued enforcement of these termination penalties violates Section 253(a) of the Act. Thus, the Commission should act pursuant to Section 253 to preempt these anti-competitive barriers to entry so that competitors are able to enter local exchange markets as envisioned by Congress, free from onerous restrictions intended to inhibit competitive entry and prevent customers from reaping the benefits of competition.

1. State Action Approving ILEC Termination Penalties and Allowing ILEC Termination Penalties to Remain Effective Prohibits Competitive Entry

As demonstrated above, ILEC termination penalties create competitive gridlock. Customers are held hostage by the ILEC and, therefore, are prevented from subscribing to the services of CLECs who may offer more innovative service with better terms, conditions and prices. CLECs effectively have few customers to provide their service to and, thus,. cannot enter the market. ILEC termination penalties, which are found in ILEC state tariffs or contracts, are approved by and enforced by state commissions.

ILECs file tariffs with the state regulatory commission detailing the terms, conditions and rates of services offered to customers in that state. Since ILECs have historically held a monopoly in their service area, tariffs theoretically enable state regulatory commissions to protect customers from unjust or unreasonable terms, conditions or rates by monitoring the ILEC tariffs. In most cases, the termination penalties threatened by ILECs on customers who wish to switch local carriers are found in the ILEC tariff filed with the state commission. Customers when initially signing up for service may not have been aware of such termination term or, if aware, had no choice anyway.

ILECs were able to impose termination penalties on customers by virtue of the state commission's acceptance of the ILECs placement of such onerous, unjust terms in their tariffs.

2. Pursuant to Section 253(d) of the Act, the Commission has the Authority to Preempt State Enforcement of ILEC Termination Penalties

Section 253 proscribes state action that has the effect of prohibiting competitive entry by CLECs. Section 253(d) makes clear that Congress intended this Commission to preempt such state action in order to ensure that all barriers to entry are removed. Section 253(d) specifically states that "[i]f . . . the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission *shall* preempt the enforcement of such statute, regulation, or legal requirement . . ."[12] By accepting ILEC tariffs with termination penalty language and allowing the continued effectiveness of such terms, state commissions are in fact "permitt[ing] a legal requirement" that violates Section 253(a). Thus, if a state commission refuses to invalidate and require the removal of ILEC termination penalties from ILEC tariffs, the Commission should preempt the enforcement of such termination penalties by ILECs.

Section 253(a) does not merely address state actions that actually "prohibit" competitive entry, but also statutes, rules, or orders that as a practical matter prevent any CLEC from providing service in the market. This statute also recognizes that the state action may be more subtle, foreclosing only certain methods of entry or enforcing requirements that effectively permit only the incumbent to provide service in the market. Thus, even though a state action may not rise to the level of an express prohibition on competitive entry, this Commission has the authority to preempt

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[12] 47 U.S. C. § 253(d) (emphasis added).

any state action that increases the costs of competitive entry or unreasonably limits the methods by which a CLEC may enter the market.[13] As this Commission concluded in the Texas Preemption Order, Section 253 "requires us to preempt not only express restrictions on entry, but also restrictions that indirectly produce that result."[14]

A state commission's sanction of termination penalties has the same effect of prohibiting competitive entry by facilities-based CLECs as any affirmative barrier to entry raised at the initiative of a state legislature or commission by statute, regulation, or order.[15] Because entry into numerous local exchange markets throughout the country have been materially inhibited by ILEC termination penalties, the continued allowance of these termination penalties in state commission approved and enforced tariffs constitutes a barrier to entry in violation of section 253(a). Under Section 253(d), this violation provides the Commission with the authority and justification to preempt any state commission action that allows the continued use of ILEC termination penalties.

B. The Commission Should Interpret Its Section 253 Authority Broadly in Light of the Supreme Court Ruling

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13 *See Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, CCB Pol 96-13, 96-16, 96-19, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3497 (1997) ("Texas Preemption Order"), at para. 75 (finding that "it is reasonable to read Section 253(a) in conjunction with the definition of telecommunications service as barring restrictions by states or localities on the means through which an entity may enter the local exchange market").

14 *Texas Preemption Order,* 13 FCC Rcd 3480, para. 41.

15 *See also Texas Preemption Order*, 12 FCC Rcd at 3563, para. 222 (preempting "a case in which the Texas Commission has upheld the enforcement of a resale restriction in SWBT's centrex resale tariff").

:ommission's authority to prohibit state enforcement of unlawful termination language te tariffs or service contracts is not changed simply because the unlawful language :C intrastate local service. As the Supreme Court recently concluded, this Commission tion to make rules governing matters to which the 1996 Act applies" and that the 1996 applies to intrastate matters.[16] The purpose of the 1996 Act is to fundamentally :he provisioning of local telecommunications services -- opening the local cations marketplace to CLECs, protecting every customer's right to chose among local cations competitors and making the inherent benefits of such local competition *ll American customers*. These local competitive mandates of the 1996 Act are currently :d by the excessive, unfair termination penalties imposed by ILECs and, therefore, are r the Commission's jurisdiction.

;nizing that the Commission's authority extends to implementation of the local rovisions of the Act, the Supreme Court upheld the local competitive provisions of the gh they applied in part to intrastate local exchange services. Indeed, the Commission's ition rules and regulations impose many requirements on intrastate local service of ILECs and CLECs. The Commission adopted these rules in an effort to make ndate of local telecommunications competition a reality. While the local competition have assisted CLECs in entering local exchange markets, additional barriers such as n penalties described herein still remain. The Commission could not have foreseen :s that would arise in the process of breaking up the ILEC monopolies and introducing

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AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721 (1999).

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> this, we conclude that certain LEC customers with long-term access arrangements will be permitted to take a "fresh look" to determine if they wish to avail themselves of a competitive alternative.[18]

The Commission has also expressed concern about the ability of incumbent carriers to "leverage" market power. The Commission described a variant of this problem in the context of 800 service:

> [l]everaging could occur, for example if AT&T offered a "captive" 800 service subscriber discounts on 800 service conditioned upon the customer's purchase of another service from AT&T -- for example if AT&T offered a customer a bundled contract of 800 service and WATS service, with ten percent discounts on each. In this example, assuming equal usage of 800 and WATS, an AT&T competitor would have to offer a twenty percent discount on WATS in order to win the customer's WATS business.[19]

Possible discounting of one service in connection with another "captive" service is only one example of how incumbents with captive customers can wield considerable market power to disadvantage new entrants. As a result, the Commission has frequently required the imposition of "fresh look" provisions in order to allow customers with long term contracts to avail themselves of the benefits offered by increased competition in telecommunications markets.[20]

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[18] *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, 7463-64 (1992).

[19] *Competition in the Interstate Interexchange Marketplace,* 6 FCC Rcd at 5906 n.234.

[20] *See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, CC Docket 96-98, 11 FCC Rcd 15499, 16044-45, at ¶ 1095 (1996), *partially vacated on other grounds, Iowa Utils. Bd. v. F.C.C.*, 120 F.3d 753 (8th Cir. 1997), *partially reinstated, AT&T Corp. v. Iowa Utilities Board*, 119 S.Ct. 721 (1999).; *Expanded Interconnection with Local Telephone Company Facilities,* 9 FCC Rcd 5154, 5207-10 (1994) ("fresh look" available to LEC customers who wish to sign with competitive access providers); *Competition in the Interstate Interexchange Marketplace,* 7 FCC Rcd 2677, 2681-82 (continued...)

Furthermore, under the Sierra-Mobile doctrine,[21] many federal commissions have modified contracts when found to be adverse to the public interest.[22] The Commission may rescind an entire agreement as inconsistent with the public interest when the Commission has found that the contract, or provisions thereof, are detrimental to the public interest.[23] The termination liability language incorporated into ILEC tariffs and contracts are inherently unjust, unreasonable, and anticompetitive (and therefore contrary to the competitive mandate of the Act and the public interest). These onerous provisions impermissibly limit customer choice, discriminate against competitors who could offer similar services at better rates, and attempt to prolong the exclusivity of monopoly-era customer contract commitments.

Commission precedent demonstrates that bringing competition to a monopolized market requires the Commission to remove restrictions on customers that exist due to ILEC market

(...continued)
(1992) ("fresh look" in context of 800 bundling with interexchange offerings); *Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands,* 6 FCC Rcd 4582, 4583-84 (1991) ("fresh look" imposed as condition of grant of licenses under Title III of Communications Act).

[21] *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).; Sierra Pacific Power Company ("Sierra") entered into a 15 year contract with Pacific Gas and Electric Company ("PG&E") for power at a special low rate. PG&E, without the consent of Sierra, filed with the FPC a schedule increasing its rate to Sierra. The Supreme Court held that the Commission may change a contract rate if it finds that an existing rate was unjust, unreasonable, unduly discriminatory or preferential. In *United Gas Co. v. Mobile Gas Corp.*, the Supreme Court found that a Commission may modify other provisions of private contracts when necessary to ser the public interest. 350 U.S. 332 (1956).

[22] 47 U.S.C. §§ 202, 205; *Western Union Telegraph Company v. FCC*, 815 F.2d 1495 (D.C. Cir. 1987).

[23] *Western Union*, 815 F.2d at 1501.

dominance. The monopolized local exchange market is no different. Numerous customers in the local exchange market are restricted to only using ILEC service for a long period of time, typically several years. The ILECs were able to force restrictions such as excessive termination penalties and long term contract periods on customers due to their market dominance. The ILEC market abuse that was detected by the Commission in other monopolized markets prior to competition and which motivated the Commission to adopt a fresh look policy clearly exists in the local exchange market. Moreover, with the declaration that ILEC excessive termination penalties are unlawful and the adoption of rules prohibiting such termination liability practices, customers will have fresh look opportunities. Thus, Commission precedent should be followed and the Commission should provide customers with fresh look opportunities that remove restrictions to allow competitors in the market, thereby transforming the monopolized market into a competitive market at a quicker pace.

State regulators must abide by the mandates of the Act and, therefore, state law should be consistent with the Commission action requested herein. While a few states have acted to declare termination penalties anti-competitive[24] or to require fresh look opportunities,[25] many states have failed to act or refuse to act.[26] The removal of this significant barrier to local competition should be addressed by this Commission. The issue falls within the jurisdiction of this Commission under

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24 *E.g.*, *Review and Consideration of BellSouth Telecommunications' Resale Tariff Filing of April 15, 1996*, Ex Parte, Docket U-22091, at 19 (Tenn. P.S.C., March 18, 1998) (concluding that "termination penalties deter competition and encourage anticompetitive behavior.").

25 *E.g., Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI (Ohio P.U.C., June 12, 1996).

26 The North Carolina Utilities Commission determined that it did not have jurisdiction to address anti-competitive termination penalties.

Section 253 and the responsibilities vested in this Commission by Congress to ensure the existence of competition in the local exchange market.

CONCLUSION

For the foregoing reasons, KMC respectfully requests that the Commission declare ILEC termination penalty charges and practices unlawful and adopt rules to prohibit the unfair imposition of such charges on customers.

Respectfully submitted,

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Dated: April 26, 1999

<u>CERTIFICATE OF SERVICE</u>

I hereby certify that on this 26th day of April 1999, a copy of the foregoing Petition for Declaratory Ruling of KMC Telecom Inc. was served via hand delivery on the following:

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